

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION II

CACR 07-196

January 23, 2008

BRANDON D. SANDERS

APPELLANT

APPEAL FROM THE CIRCUIT COURT
OF WASHINGTON COUNTY
[NO. CR-05-2402-1]

V.

HONORABLE WILLIAM A. STOREY,
JUDGE

STATE OF ARKANSAS

APPELLEE

REBRIEFING ORDERED

A jury in Washington County found appellant Brandon D. Sanders guilty of first-degree murder in the death of April Love and fixed his sentence at twenty-five years in prison. Appellant raises five issues on appeal, including the contention that the trial court erred by denying his motion for a change of venue. We order rebriefing because appellant's abstract and addendum are not sufficient to decide this issue.

Rule 4-2(a)(5) of the Rules of the Supreme Court and Court of Appeals provides that the appellant's abstract should include such material parts of the record as are necessary to an understanding of all questions presented to the Court for decision. Likewise, the appellant's addendum is to include the relevant pleadings, documents and exhibits that are essential to an understanding of the case. Ark. R. Sup. Ct. 4-2(a)(8). When an appellant's

abstract or addendum is considered by us to be deficient, we may order rebriefing for the deficiencies to be cured. Ark. R. Sup. Ct. 4-2(b)(3).

In this case, appellant filed a pretrial motion for a change of venue to which he attached the affidavits of two registered voters in Washington County who stated that appellant could not receive a fair trial due to pretrial publicity. The trial court addressed this motion at a hearing held on September 22, 2006, at which appellant introduced into evidence a number of newspaper articles concerning the murder. The trial judge took the motion under advisement, stating that he would consider a change of venue if it appeared during the jury-selection process that twelve jurors could not be found who had not formed an opinion on appellant's guilt or innocence. The issue was indeed revisited during voir dire.

The abstract in this case only contains the trial court's preliminary ruling taking the motion for a change of venue under advisement. The abstract, however, does not contain the voir dire of the jury when this issue was again addressed and ruled upon by the trial court. The addendum includes the appellant's motion for a change of venue and the attached affidavits, but it does not contain the newspaper articles introduced into evidence at the September 22 hearing that appellant relies upon in the argument section of his brief.

In light of these serious omissions, we order appellant to file a substituted brief abstracting that portion of voir dire where the issue of pretrial publicity was addressed and the trial court's ruling on the motion for a change of venue. Appellant should also include in the addendum the newspaper articles that were admitted into evidence. Appellant has fifteen days from the date of this opinion to file the substituted brief. The State may file a

responsive brief within ten days, or it may rely on its brief that was previously filed in this case. We remind counsel for the appellant that the failure to file a complying abstract and addendum within the prescribed time may result in an affirmance for noncompliance with the rule.

Rebriefing ordered.

HART and MILLER, JJ., agree.

